



# Centre for Environmental Rights

## Advancing Environmental Rights in South Africa

### Appeals and Legal Review Directorate

Department of Forestry, Fisheries and the Environment  
Environment House  
473 Steve Biko Road  
Pretoria  
By email: [appeals@environment.gov.za](mailto:appeals@environment.gov.za)  
[appealsdirector@environment.gov.za](mailto:appealsdirector@environment.gov.za)

Copies to:

### Honourable Minister Barbara Creecy

Minister of Forestry, Fisheries and the Environment  
By email: [fshaik@environment.gov.za](mailto:fshaik@environment.gov.za)  
[BMbuli@environment.gov.za](mailto:BMbuli@environment.gov.za)

### Dr Thuli Khumalo

National Air Quality Officer  
Department of Forestry, Fisheries and the Environment  
By email: [tkhumalo@environment.gov.za](mailto:tkhumalo@environment.gov.za)

### Ms Nomfundo Tshabalala

Director-General  
Department of Forestry, Fisheries and the Environment  
By email: [dg@environment.gov.za](mailto:dg@environment.gov.za)

### Mr Derrick Makhubele

Director: Air Quality Management  
Department of Forestry, Fisheries and the Environment  
By email: [dmakhubele@environment.gov.za](mailto:dmakhubele@environment.gov.za)

### Ms Deidre Herbst

Senior Environmental Manager  
Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sandton  
By email: [HerbstDL@eskom.co.za](mailto:HerbstDL@eskom.co.za)

### Ms Marissa Botha

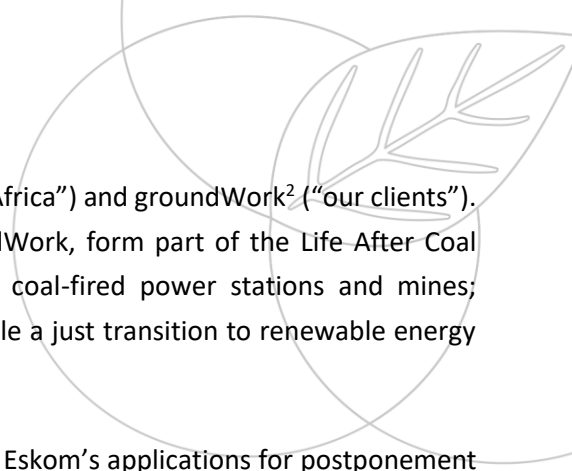
Environmental Assessment Practitioner  
Naledzi Environmental Consultants Pty Ltd  
160 Marshall Street  
Polokwane  
By email: [botham@naledzi.co.za](mailto:botham@naledzi.co.za)

Your ref: Eskom/postponements  
Our ref: NL/TL/MS  
21 January 2022

Dear Sirs/Mesdames

### NATIONAL AIR QUALITY OFFICER'S DECISIONS REGARDING APPLICATIONS FOR POSTPONEMENT/SUSPENSION OF COMPLIANCE TIME-FRAMES RELATING TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 OF 2004 MINIMUM EMISSION STANDARDS IN RESPECT OF ESKOM HOLDINGS SOC LTD

Cape Town: 2<sup>nd</sup> Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa  
Johannesburg: G/F the Cottage, 2 Sherwood Road, Forest Town, Johannesburg, 2193, South Africa  
Tel 021 447 1647 (Cape Town)  
[www.cer.org.za](http://www.cer.org.za)

- 
1. We write to you on behalf of our clients Earthlife Africa NPC<sup>1</sup> (“Earthlife Africa”) and groundWork<sup>2</sup> (“our clients”). The Centre for Environmental Rights (CER), Earthlife Africa and groundWork, form part of the Life After Coal Campaign, a campaign which aims to discourage investment in new coal-fired power stations and mines; accelerate the retirement of South Africa’s coal infrastructure; and enable a just transition to renewable energy systems for the people.<sup>3</sup>
  2. We refer to the National Air Quality Officer’s (NAQO) set of decisions on Eskom’s applications for postponement of compliance and suspension of compliance with the Minimum Emission Standards (MES), and/or alternative limits, for its fleet of coal-fired power stations and gas-to-power stations. These decisions are dated 30 October 2021.
  3. The notification email sent by Naledzi Environmental Consultants Pty Ltd (“Naledzi”) to Interested & Affected Parties (I&APs) on 14 December 2021, confirmed that Eskom received these decisions on 4 November 2021. We have also been informed by Naledzi, that Eskom submitted an appeal against these decisions on 13 December 2021, and that Eskom is waiting for the Appeals & Legal Review Directorate (the “Directorate”) to provide the timeframe for I&APs to submit responding statements.
  4. In light of the provisions of the National Appeal Regulations, 2014, and the Guideline on Administrative Appeals, 2015, we note, with extreme concern, that I&APs were only notified of the NAQO’s October decisions on 14 December 2021 – a day after Eskom’s appeal was reportedly lodged – and that I&APs are yet to receive the appeal submission for consideration. This is especially so given the nature and far-reaching implications of these decisions. At the time of receiving Naledzi’s email notification, a number of relevant staff from Earthlife Africa, groundWork, and CER, had already taken leave, and the offices of all three organisations closed on 15 December 2021 for the public holiday period.
  5. Furthermore, we note that the public participation process for this set of applications commenced in August 2018, with final objections related to the Medupi and Matimba coal-fired power stations submitted in August 2020. We submit that notifying I&APs of these decisions over a year later on the eve of December/January shut-down period, along with the expectation that properly considered appeals must be submitted by 25 January 2022, is inconsistent with the public participation provisions under the National Environmental Management Act, 1998, (NEMA), and section 33 of the Constitution of the Republic of South Africa, 1996.
  6. Notwithstanding the adjustment of the appeal submission deadline to 25 January 2022 to account for the public holiday period, we have not been afforded reasonable time to properly consider the decisions with our clients, obtain expert analysis where necessary, and take instructions. We are also unable to resolve the appropriate way forward, in the public interest and to protect constitutional rights and values, without considering a copy of Eskom’s appeal submission, to which I&APs were entitled once lodged with the Directorate. Again, given the far-

---

<sup>1</sup> Earthlife is a registered non-profit company (NPC) with registration number 2017/449921/08. It was founded in 1988 to mobilise civil society around environmental issues in relation to people. Earthlife challenges environmental degradation and aims to promote a culture of environmental awareness and sustainable development in South Africa.

<sup>2</sup> groundWork is a non-profit environmental justice service and developmental organisation working primarily in Southern Africa in the areas of Climate and Energy Justice, Coal, Environmental Health, Global Green and Healthy Hospitals and Waste. groundWork is the South African member of Health Care Without Harm and Fried of the Earth International.

<sup>3</sup> <https://lifeaftercoal.org.za/>.

reaching implications of these decisions, the prospect of an appeal and/or responding statement warrants careful deliberation with our clients and adequate time to do so.

7. This letter serves to place the above chronology and our concerns on record, at this stage, and to inform the Department that in the event that we are instructed by clients to lodge an appeal, following a proper consideration of the decisions, we will only be able to lodge the appeal after 25 January 2022. We therefore intend to apply for condonation/extension in terms of section 47C of NEMA and the Guideline for Administrative Appeals, 2015.
8. Our clients' rights are fully reserved.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**

Per:



**Michelle Sithole**

**Attorney**

Direct email: [msithole@cer.org.za](mailto:msithole@cer.org.za)